

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
vs.)	Criminal Case No. 2:06-cr-200-CSC
)	
ROSA E. RINCON)	

SECOND MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

COMES NOW Defendant, by and through counsel, and prays that the Court will grant her leave to file an additional motion in this case, the attached Notice of Affirmative Defenses and Motion to Dismiss Pursuant to Rules 12(b) and 18, F.R.Crim.P.

In continuing communications with Defendant and pursuant to legal research, counsel believes that the motion raises questions of jurisdiction which should be considered by the Court prior to the trial of this matter.

The Court has continued the trial of this matter from October 24, 2006, until January 8, 2006, but has not adjusted the deadline for the filing of motions. Counsel suggests that the granting of this motion should not delay the trial of this cause or prejudice the government in any way.

The Court has set a hearing for November 28, 2006, into a co-defendant's motion to suppress evidence. It is respectfully suggested that Defendant's attached motion could be heard at the same time.

WHEREFORE, the premises considered, and in the interest of justice, Defendant prays that the Court will grant her leave to file the attached motion.

RESPECTFULLY SUBMITTED, this __17th__ day of November, 2006.

/s/ JAY LEWIS
Jay Lewis
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J-Lewis@JayLewisLaw.com
ASB-2014-E66J
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the _17th_ day of November, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following parties or counsel:

Terry Moorer
Christopher Snyder
Office of the United States Attorney

Matthew Patrick Teague
Attorney for Silva

/s/ JAY LEWIS
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**NOTICE OF AFFIRMATIVE DEFENSES AND
MOTION TO DISMISS PURSUANT TO RULES 12(b) AND 18, F.R.CRIM.P**

COMES NOW Defendant, by and through counsel, and serves notice on the Court and the government of her affirmative defenses of the statute of limitations and improper venue and moves the Court to dismiss Count 2 of the indictment on those bases. In support of which, Defendant would show the Court the following:

1. Count 2 of the indictment charges a violation of 8 U.S.C. 1325(a), illegal entry.
2. The applicable statute of limitations for a violation of the relevant statute is five years.

“Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.” 18 U.S.C.A. § 3282.
3. The offense charged is not a continuing offense. *U.S. v. Rincon-Jimenez*, 595 F.2d 1192 (9th Cir. 1979). The statute of limitations begins to run when the offense is complete; in this case it was complete upon entry.
4. The indictment in this matter was not brought within five years of the commission of the offense charged.
5. Defendant has been living peacefully in this country for at least the past thirteen years.

6. Defendant respectfully submits that the Court is without jurisdiction to prosecute, try, or punish her for an offense for which the statute of limitation has expired.
7. Defendant respectfully submits that the indictment is defective as a result of the foregoing.
8. Defendant further alleges that the offense charged under Count 2 of the indictment was not committed within the Middle District of Alabama; thus this Court is without jurisdiction to conduct a trial here. Rule 18, F.R.Crim.P., provides that “[u]nless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed.” See also, Article III, Section 2, Paragraph 3 of the Constitution of the United States (“The Trial of all Crimes ... shall be held in the State where the said Crimes have been committed....”). The Sixth Amendment further provides that the accused has a right to trial “by an impartial jury of the State and district wherein the crime shall have been committed.”
9. Defendant does not waive her right to assert the affirmative defense of the statute of limitations, and she here asserts that defense.
10. Defendant does not waive her right to be tried in the proper venue.

WHEREFORE, the premises considered, Defendant prays that the Court will dismiss Count 2 of the indictment under the authority of Rules 12(b)(2), 12(b)(3)(B), and 18, F.R.Crim.P. and under the Constitution of the United States.

RESPECTFULLY SUBMITTED, this __17th__ day of November, 2006.

/s/ JAY LEWIS
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